

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

GAILAND K. BREDE,)
vs. Plaintiff,)
AMERICAN SECURITY)
INSURANCE COMPANY,)
Defendant.)

No. 3:08-cv-464

MOTION FOR LEAVE TO AMEND ANSWER TO
ASSERT OMITTED COUNTERCLAIM

Pursuant to Rules 13(f) and 15(a) of the Federal Rules of Civil Procedure, Defendant, American Security Insurance Company (“ASIC”), hereby moves this Court for an Order granting it leave to amend its Answer [Doc. 6] previously filed in the above-captioned action in order to assert a counterclaim. Upon information and belief, ASIC asserts that certain payments made to Plaintiff and required to be used by Plaintiff for making specific repairs, on behalf of the lender, to the insured property at issue in this action were not so used. ASIC submits that, instead, the funds have been retained by Plaintiff. Since Plaintiff no longer has any interest in the subject property, Plaintiff’s retention of these funds constitutes unjust enrichment. Accordingly, ASIC is entitled to reimbursement from Plaintiff for these payments. ASIC submits that said counterclaim was omitted through “oversight, inadvertence, or excusable neglect,” and that “justice requires” granting leave to ASIC to amend to assert the omitted counterclaim. Further, ASIC states that Plaintiff will not be prejudiced by such amendment as neither written discovery nor depositions have begun.

In support of this Motion, ASIC also relies upon the pleadings filed herein and its Memorandum of Law filed contemporaneously herewith.

WHEREFORE, premises considered, Defendant respectfully requests that this Court grant it leave to amend its Answer to assert the omitted counterclaim reflected in Exhibit A attached hereto.

Respectfully submitted,

/s/ R. Brad Morgan
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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2009, the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

/s/ R. Brad Morgan
R. Brad Morgan